on them from the defendant carrier. *Held*, that the carrier is not liable to the seller. *Nelson Grain Co.* v. *Ann Arbor R.*, 140 N. W. 486 (Mich.).

That a "straight" bill is nothing more than a contract under which delivery can be made without taking up the bill may be true. *Singer* v. *Merchants', etc. Co.*, 191 Mass. 449, 77 N. E. 882. But an "order" bill of lading by its form and frequently by express stipulation represents that it is an indispensable key to the delivery of the goods by the carrier. *Goepel* v. *Hamburg, etc. Co.*, 191 Fed. 744; *Forbes* v. *Railroad*, 133 Mass. 154. When the consignee of an "order" bill of lading, having possession of it, secures delivery of the goods without surrendering the bill, a subsequent holder of the indorsed bill can hold the carrier for conversion. *Ratzer* v. *Burlington, etc. R.*, 64 Minn. 245, 66 N. W. 988; *Chesapeake S. S. Co.* v. *Merchants' National Bank*, 102 Md. 589, 63 Atl. 113. *Cf. Ridgway Grain Co.* v. *Penna. R.*, 228 Pa. 641, 77 Atl. 1007. By general custom bills may be made out to the order of the buyer and possession of the bills retained by the seller or his agent for the purpose of preventing delivery till the price is paid. See WILLISTON, SALES, § 285. In the principal case, however, the court argues that the carrier had no notice of the right or desire on the part of the plaintiff to prevent delivery, since he was not even named on the bill of lading as consignor. Such an argument might apply to a shipment under a "straight" bill of lading. Its use here fails to observe the essential difference between "straight" and "order" bills which has been pointed out. If, under all circumstances, the courts would require the carrier to take up the "order" bill before delivering the goods, less confusion would result, and a valuable mercantile custom would be recognized and effective. The Uniform Sales Act, recently adopted by Michigan, accentuates the distinction contended for. UNIFORM SALES ACT, § 20 (2 and 3). See WILLISTON, SALES, § 281 ff. In accord with the principal case: *St. Louis, etc. R.* v. *Gilbreath*, 144 S. W. 1051 (Tex.). For further discussion of the distinction between "straight" and "order" bills of lading see 22 HARV. L. REV. 534; 23 HARV. L. REV. 146.

SALES — SALE OF GOODS ACT — NOTICE OF SHIPMENT BY SEA. — The plaintiff sold goods to the defendant F. O. B. Antwerp, the shipping point. The Sale of Goods Act, § 32 (3), provides that "unless otherwise agreed, where goods are sent by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as will enable him to insure, and if he fails, the goods shall be at his risk." No notice was given. The goods were lost uninsured, and an action is brought relying upon this section. *Held*, that the section had no application to F. O. B. sales. *Wimble* v. *Rosenberg*, 57 Sol. J. 392, 784 (K. B. Div.; aff'd Ct. App., July, 1913).

This section of the English Sale of Goods Act, followed in the American Uniform Sales Act, § 46 (3), is foreign to the common law, being adopted from the Scotch law, where the rule has long been well settled. *Arnot* v. *Stewart*, 6 Paton App. Cas. 289; *Fleet* v. *Morrison*, 16 Sess. Cas. 1122. Prior to this case there had been no English or American decision on this section. The present case seems incorrect. No reason appears for excepting F. O. B. sales from the requirements of the section. On the contrary, F. O. B. sales are the very kind in which notice is required; for in the other two kinds of sales common in England, where sea transit is involved, "C. I. F." sales (where the price covers the cost, freight, and insurance), and "ex ship" sales (where the ship is named), obviously notice is immaterial. Moreover, a sale F. O. B. place of shipment is equivalent to an ordinary shipment. To except such a sale from the section is practically cancelling the section. The requirement of notice is reasonable. Title has passed to the buyer, and he should be given the opportunity to insure the goods. The aversion shared in by many courts to recognizing that a statute changes the common law seems here to have been carried to extreme lengths.

STATUTES — INTERPRETATION — STATUTE ALLOWING JURY TO ASSESS PUNISHMENT. — A statute authorized the jury in bringing in their verdict to inflict the death penalty in a trial for rape, although the court on its own initiative could not pronounce so heavy a sentence. The defendant pleaded guilty to secure the lighter penalty but was forced by the court to stand trial. *Held*, that the ruling was correct for otherwise a jury trial would be denied the defendant. *United States* v. *Green*, 41 Wash. L. Rep. 216 (Dist. Col.).

For a comment upon this case see this issue of the REVIEW, at p. 169.

SUNDAY LAWS — VALIDITY OF CONTRACT EXECUTED ON SUNDAY — SUBSEQUENT PROMISE TO PAY. — The defendant hired an automobile from the plaintiff on a Sunday for the purpose, as the court puts it, of "joy riding." This was in violation of the Sunday law. On a subsequent secular day the defendant promised to pay the plaintiff for the ride. *Held*, that the plaintiff cannot recover. *Jones* v. *Belle Isle*, 79 S. E. 357 (Ga.).

The asserted policy of the law against contracts made on Sunday forbids the enforcement of such agreements by the courts. *Riddle* v. *Keller*, 61 N. J. Eq. 513, 48 Atl. 818; *Day* v. *McAllister*, 15 Gray (Mass.) 433. The illegality of Sunday contracts, however, is not so serious that the parties lose all legal remedies. *Adams* v. *Gay*, 19 Vt. 358. If the agreement is wholly executory, the parties may disregard it completely and on a week day adopt its terms in a new contract. *Miles* v. *Janvrin*, 200 Mass. 514, 86 N. E. 785. Furthermore, if property has been transferred on Sunday without consideration, to prevent unjust enrichment the law gives the vendor the right to repudiate the whole transaction and obtain restitution of his property. *Tucker* v. *Mowrey*, 12 Mich. 378; *Ladd* v. *Rogers*, 11 Allen (Mass.) 209. *Contra*, *Chestnut* v. *Harbaugh*, 78 Pa. 473. If on a secular day the contract is adopted, then, since the vendor thereby surrenders his right to restitution, there is sufficient consideration to support the new promise by the transferee. *Williams* v. *Paul*, 6 Bing. 653, 4 M. & P. 532; *Sayles* v. *Wellman*, 10 R. I. 465; *Brewster* v. *Banta*, 66 N. J. L. 367, 49 Atl. 718. But where restitution is impossible by reason of the nature of the performance rendered, as in the principal case, repudiation accomplishes nothing. The policy of the law, moreover, forbids quasi-contractual liability, since it tends to enforce the unlawful agreement. Therefore the new promise in such a case lacks consideration. As the policy of the law also prevents its operation as a ratification of the original transaction, the principal case seems correct. *Pope* v. *Linn*, 50 Me. 83. Many authorities, it is true, appear to sanction ratification, but it is submitted that in reality their doctrine conforms to the analysis indicated above.

TORTS — NATURE OF TORT LIABILITY IN GENERAL — LIABILITY WITHOUT NEGLIGENCE — BLASTING. — The defendant in doing railroad construction work exploded a blast, the vibrations from which destroyed the plaintiff's well. The defendant had not been negligent. *Held*, that the plaintiff may recover. *Patrick* v. *Smith*, 134 Pac. 1076 (Cal.).

This case is opposed to American authority which holds that, in the absence of negligence, the plaintiff cannot recover when damage is caused by the vibrations from blasting. *Derrick* v. *Kelley*, 136 N. Y. App. Div. 433, 120 N. Y. Supp. 996; *Booth* v. *Rome, Watertown & O. T. R. Co.*, 140 N. Y. 267, 35 N. E. 592. When, however, the damage is due to débris thrown on the plaintiff's land, the weight of authority is that liability is absolute. *Hay* v. *Cohoes Co.*, 2 N. Y. 159; *Langhorne* v. *Turman*, 141 Ky. 809, 133 S. W. 1008. This latter class of cases is explained by the fact that there is a technical trespass. There seems, however, little distinction between setting a force in motion, knowing it will project rocks through the air, and knowing it will project vibrations through the earth and air. *Hickey* v. *McCabe*, 30 R. I. 346, 75 Atl. 404; *Colton* v.